## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA ASHEVILLE DIVISION 1:11cv204

YOLANDA SILVA-CAMPOS,	)	
	)	
Plaintiff,	)	
	)	
<b>v.</b>	)	<b>ORDER</b>
	)	
SHELTON & SONS FARMS, INC.	)	
and MAX T. SHELTON, JR.,	)	
	)	
Defendants.	)	
	)	

Pending before the Court is Plaintiff's Motion to Strike [# 16]. Plaintiff brought this action pursuant to the Migrant and Seasonal Agricultural Worker Protection Act ("AWPA"). Plaintiff moved to strike two of the affirmative defenses raised in Defendant's Answer. Upon a review of the parties' briefs, is its unclear what issues need to the resolved by the Court. As a threshold matter, the Complaint only asserts a claim under the AWPA; it does not assert a state law negligence claim. Thus, the contributory negligence defense has no bearing in this case because, as Defendants' concede, "contributory negligence is not a defense to a federal AWAPA cause of action or to a third-party beneficiary/breach of contract claim." (Defs.' Resp. Pl.'s Mot. Dismiss at p. 7.)

Additional, it is not clear from the briefs as to whether a ruling on

Defendants' Limitation of Damages defense is needed. Specifically, it is unclear whether Defendants intend to argue that the Tennessee Worker's Compensation Act is the exclusive remedy for Plaintiff - i.e., Plaintiff must bring a claim under this act rather than the AWPA - or only that the Tennessee Worker's Compensation Act provides the measure of Plaintiff's potential damages under the AWPA. Accordingly, the Court **DIRECTS** counsel for the parties to confer in person or by telephone as to what, if any, legal issues regarding Defendants' affirmative defenses need to resolved by this Court. The parties shall then submit a joint status report within ten (10) days of the entry of this Order specifically setting forth each legal issue that needs to be resolved and a brief statement as to each parties' position. This status report should not exceed five pages in length.

Signed: April 26, 2012

Dennis L. Howell

United States Magistrate Judge